1,446 NB Solicitor General

REVIEW OF CERTAIN PRACTICES

IN

NEW BRUNSWICK CORRECTIONAL INSTITUTIONS

SUMMARY OF REPORT

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SUMMARY OF REPORT

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SUMMARY OF REPORT

PART I - GENERAL

The Terms of Reference of this Review as established by the Solicitor General were:

- To examine current practices giving rise to the use of restraint and segregation of adult and young offenders in New Brunswick provincial correctional institutions in relation to acceptable national/international standards;
- To assess the appropriateness of restraint devices currently in use;
- To assess the adequacy of staff training as it pertains to the above practices;
- To assess the adequacy of internal and external mechanisms to monitor the use of restraint and segregation in order to ensure that abuses do not occur and that these practices are fair, humane and comply with legal standards including the Charter of Rights; and,
- To present findings and, if appropriate, recommend changes to legislation, policy and practices, applicable to the New Brunswick Correctional System.

It was subsequently determined that the review was to apply only to custody or detention in facilities operated by the Solicitor General of New Brunswick. Other facilities, such as young offender open custody facilities operated by, or on behalf of, the Ministry of Health and Community Services were not intended to be within the Terms of Reference of the Review and were not reviewed.

In conducting the Review the following steps were taken:

- All New Brunswick adult and young offender correctional facilities were visited;
- Other facilities including provincial mental health facilities, federal penitentiaries and a correctional facility in Nova Scotia were visited;
- Sixteen past reports regarding the department were reviewed;
- All departmental policies and procedures relevant to the Terms of Reference were reviewed;
- A Canada-wide survey regarding segregation, use of force and restraint in all provincial adult and youth correctional systems was conducted;
- Extensive information was obtained from the Correctional Service of Canada;
- The Youth Advocates in other provinces were consulted;
- Legal research into the state of the law in New Brunswick as it relates to the relevant aspects of correctional practice was conducted;
- A sampling of American correctional practice was obtained;
- In-person and written consultations with a number of stakeholders were carried out;
- A round table discussion of front line staff was conducted;
- A round table discussion of offenders was conducted;
- A survey regarding conditions in segregation in New Brunswick facilities was compiled;
- Incident videotapes were reviewed;

- A three year review of all restraint board incidents at one correctional facility was compiled;
- Ten incidents were reviewed by way of an in-depth case study; and
- A one year quantative review of segregation use at one youth correctional facility was conducted.

The legal and operational framework for correctional facilities in New Brunswick has many layers. The Canadian Charter of Rights and Freedoms establishes constitutional rights of individuals in Canada and these rights apply to offenders in custody. The main statute governing adult corrections in New Brunswick is the Corrections Act. However, most of the detail regarding the operation of correctional facilities is set out in Regulation 84-257 passed under that Act. For young offenders in custody the law is set out by statute in the Custody and Detention of Young Persons Act and in Regulation 92-71 passed under that Act. In addition, in many cases the courts have established common law rules for the operation of correctional facilities.

The Department of the Solicitor General has established extensive policy and procedural manuals applicable to adult and young offenders. These manuals are not law but provide a detailed set of provincial standards. In addition, each individual institution has developed local policy or standing orders and in some cases the standing orders are the subject of another layer of rule-making through a specific memorandum or post order. This layering of constitutional law, statutes, regulations, common law, provincially mandated policies, institution specific standing orders and memoranda can be very confusing to staff. It is made even more confusing because the statutes and regulations that

apply to New Brunswick institutions are somewhat incomplete and outdated.

In addition to the domestic law, Canada is a party to a number of international treaties that set out minimum standards for the treatment of offenders including the United Nations Standard Minimum Rules for the Treatment of Prisoners, the Universal Declaration of Human Rights, the International Covenant of Civil and Political Rights and the Convention against Torture.

PART II - ADMINISTRATIVE SEGREGATION

A correctional authority may isolate an offender from other offenders by placing him or her in segregation. There are two distinct kinds of segregation known as administrative segregation and disciplinary segregation. Administrative segregation is, typically, for reasons of protection of the offender or others. Disciplinary segregation is a specific kind of punishment which can be imposed if an offender is found to have committed a prison misconduct offence. These two kinds of segregation are different and must be treated separately.

The courts have characterized segregation as "a prison within a prison" and have established legal rules to be applied to the placement. For placement in administrative segregation there are two main legal principles:

- The correctional authority must make decisions about placement in a procedurally fair manner; and

- A person in administrative segregation retains all their rights except those that are removed by law or by necessary implication of being placed in segregation.

The adult and youth correctional statutes in New Brunswick are silent about segregation. The regulations provide the reasons of why an offender may be placed in segregation and require the Superintendent to review the case daily.

A review of segregation use at one secure custody facility for young offenders found that in a one year period segregation was used 872 times. During that period there were an average of 62 young offenders in custody at that institution. Serious matters comprised between 10% and 20% of all placements in segregation and less than 13% of all placements were for less than 12 hours. Although comparisons with other jurisdictions are difficult, the New Brunswick rate of segregation use appeared considerably higher than any other province to which a comparison could be made.

The correctional statutes should set out the basic requirements to ensure that placement in segregation is in accordance with the law. Currently, they are silent. Specific changes to the laws are recommended. The regulations under the adult and youth correction statutes need to be amended. They are not detailed enough and do not deal with a number of important legal requirements such as providing for proper reviews, visits to segregation and physical living conditions in segregation. For adult offenders a daily review without a hearing and a hearing after five days and every ten days thereafter should be required for persons in administrative segregation. For young offenders the review should be hourly and an interdisciplinary review team should review the case of any young

person in segregation for eight hours. The provincial policies and local standing orders require updating and improvement.

[redacted]

PART III - MISCONDUCTS AND DISCIPLINARY SEGREGATION

The other type of segregation is that which can be imposed by a Superintendent as a penalty when an offender is found to have committed an institutional misconduct. The Charter of Rights requires that a fair process must be followed. The current law in New Brunswick related to adult offenders requires only minor changes. However, major changes are required in how the law is implemented

to ensure that staff use the misconduct system properly instead of bypassing it in favour of informal consequences for offenders.

For young offenders a new legal scheme in the regulation is required. The current scheme does not apply to all facilities and there are behaviour management programs in facilities that impose adverse consequences for behaviour that also constitutes a misconduct. Unfortunately, these behaviour management programs impose these consequences outside any legal framework. In both adult and young offender facilities, staff needs to be trained in the misconduct process.

PART IV - RESTRAINT AND USE OF FORCE

Restraint when carried out by a correctional authority on an offender falls into two broad categories:

- restraint as part of an authorized use of force, and
- restraint used to prevent an offender from harming themselves.

The New Brunswick correctional statutes are silent on use of force and the regulations address the issue only in a very general manner. Currently the policies and procedures do not control what is or what is not approved or acceptable restraint equipment, do not sufficiently establish the frequency of checks of an offender who is restrained, are overly broad in permitting restraint for minor matters and are unclear about who authorizes restraint. The department has prepared a revised policy on restraint which is an improvement over the current policy but even this revised policy is insufficient.

The introduction of both the restraint board and Oleoresin Capsicum to the correctional system were made without adequate concern for the protection of rights of offenders. The restraint board was issued with no provincial policies, procedures or training. The introduction of Oleoresin Capsicum was better handled but it had shortcomings such as the lack of clarity about whether Oleoresin Capsicum was intended for use on young offenders.

An analysis of restraint board use at one correctional facility over a three year period indicated that in the vast majority of cases restraint boards were used for reasons that constituted a misconduct under the misconduct regulation. In these cases, the restraint board was being used as a form of punishment. Use of the restraint board for punishment does not meet domestic or international legal standards.

The study of health risks that arise from using restraint techniques or equipment typically used in policing and corrections is a new field. This research is developing rapidly as the policing and corrections community implement alternatives to lethal force. New types of equipment and methods have resulted in new health risks, the dimensions of which are just being recognized. It is important that the correctional system stay current on this emerging research, in order to ensure that the techniques and equipment it uses minimize any health risk to offenders and staff. Failure to do so could result in legal liability for the department. Of major importance is new research indicating that extreme restraint, such as use of a restraint board, can result in "positional asphyxia". This health risk has resulted in the Correctional Service of Canada ceasing the use of the restraint board. The only other Canadian jurisdiction that authorizes use of a restraint board is British Columbia, and in that

province it is used only on adult offenders. Alberta uses a restraint chair on adult and young offenders.

Amendments are required to the adult and youth corrections statutes to prohibit restraint of an offender as punishment, and to prohibit the use of any restraint equipment except for types approved by the Solicitor General. New regulations are required to clearly set out the circumstances in which restraint is permitted. The use of restraint to prevent self-harm or property damage needs to be governed by new regulations. The current use of restraint is too highly subjective and open to wide discretion of staff. The most serious instances of restraint use should be subject to external review.

The restraint board should be banned. Other restraint should be subject to maximum durations and to reviews by senior departmental officials. Except in routine cases of restraint when young offenders are transported outside a correctional institution, and in emergencies, young persons should not be subject to restraints except upon the prior approval of a review team. In the case of emergencies, the review team should conduct its review as soon as possible after the event.

Oleoresin Capsicum use in young offender facilities ought to be limited to specialized trained crisis intervention teams and only be used with senior approval.

PART V - RELATED CORRECTIONAL ISSUES

The three areas dealt with above, administrative segregation, disciplinary segregation and restraint are the most central to this Review. However, there are a number of related issues, all of which also affect the issues set out in the Terms of Reference.

Virtually all staff and offenders noted the lack of consistent and available correctional programming. This lack of programming leads to boredom and feelings of listlessness which, in turn, leads to destructive behaviour, particularly with young offenders. Destructive behaviour, in turn, can result in a situation culminating in the use of force by staff on an offender. Improved programming is required.

A number of issues related to the staffing in correctional institutions were considered. Steps can be taken to improve staff deployment, morale, training and attitude all at little or no cost. Shift Supervisors need to be recognized as occupying a pivotal position in the administration of a correctional institution. While a Superintendent is responsible for the overall management and direction of an institution it is the Shift Supervisor who is the frontline manager. That person is the senior person on duty for all but 40 hours of the 168 hour week. The Shift Supervisor sets the tone for their shift. It can be a shift characterized by professionalism, recognition of the rule of law and consistency blended with appropriate degrees of flexibility and compassion or it can be a shift that is unpredictable, punitive, lazy and reckless. While the Shift Supervisor is, in many respects, the key position in a correctional institution it is also one of the least recognized. A number of

recommendations are made to address the nature of the work performed by Shift Supervisors and their recruitment, training and career development.

Mental health services for offenders in New Brunswick correctional institutions are not adequate The institutional mental health system is shrinking as there is a move to the deinstitutionalization of the mentally ill. As a result there is decreasing institutional support for mentally ill offenders in the mental health system. Even this limited institutional support is not fully accessed by the correctional system particularly as it relates to the new forensic unit at Restigouche Hospital and the Regional Treatment Centre at Dorchester Penitentiary. A forensic program for the province is badly needed and a committee that was previously established to prepare one should get on with its work. Regional and local arrangements should be made as well and training is required.

Young offenders are detained in the Saint John Regional Correctional Centre which is a correctional institution that also houses adult offenders. Under the Young Offenders Act young persons are legally required to be "held separate and apart from any adult". Control mechanisms to keep young offenders separate and apart within that institution are inadequate and additional steps need to be taken to satisfy this legal obligation.

Handbooks exist which set out the rights and responsibilities of offenders. However, the handbooks need to be revised and, most importantly, need to be more accessible to offenders.

Correctional staff frequently use force to control offender behaviour. Sometimes this intervention

has been to address security limitations that exist in the physical plant of the correctional institutions Properly addressing these security limitations would reduce the perceived need on the part of correctional staff to use force and restraints to compensate for an inadequate physical plant. Proper security reviews should be carried out in order to eliminate this need for compensating behaviour by staff. In the meantime, a number of specific problems in the physical plant should be addressed. The physical plant standards proposed for the new youth centre should be reviewed to ensure that staff will not similarly need to engage in this compensating behaviour.

Due to limitations regarding the data available, it was not possible to come to definitive conclusions as to whether segregation or restraint practices differed on the basis of gender, race or aboriginal status. The differential impact of correctional practices on female, aboriginal and racial minority offenders has been noted in other recent reports, (related to other correctional systems in Canada) and should be studied further in New Brunswick.

The organizational culture in the Correctional Services Division is dominated by informality and pragmatism. This applies to the frontline staff, administrators and, in the perception of many staff, to senior departmental officials. A modern professional correctional system needs to operate with strong and clear lines of accountability, appropriate delegation by authority and knowledge of, and respect for, the law. Steps need to be taken to move from the current culture to a new organizational culture, the hallmarks of which are accountability, integrity, openness and a respect for the law.

PART VI - INTERNAL MONITORING MECHANISMS

A correctional system needs comprehensive methods of ensuring that its own rules are followed. There are a number steps that the Correctional Services Division should take in this regard. Standards of written reports need to be improved. Additional information needs to be kept regarding admission to and discharge from segregation and record keeping needs to be more directly tied to the applicable legal requirements and the exercise of discretion.

The pilot project at the Saint John Regional Correctional Centre which has a computer based system for ensuring that rounds are conducted by correctional officers needs to be analyzed and an electronic round monitoring system implemented in all correctional institutions.

The Correctional Services Division is to be commended for its practice of videotaping incidents in correctional institutions. This is a positive practice that is done in virtually no other provincial correctional system. However, the videotaping policy is informal and unstructured and the camera operators are untrained. A new, detailed incident videotaping policy that addresses training, technical matters, staff conduct and the use and retention of videotapes is required. Furthermore, a policy is required regarding the camera monitoring of special management offenders (such as high violence or suicidal offenders) that balances security needs with privacy issues.

Well managed, modern correctional authorities have an ability to conduct internal reviews of significant events that raise legal compliance issues and issues of public safety. Currently, there does

not appear to be any policy determining what incidents trigger what forms of internal review. Historically, there was a fulltime individual who carried out the function of internal investigations. However, in recent years this model has fallen into disfavour, apparently as a result of concerns regarding the objectivity, or appearance thereof, of internal investigations. As a result, there is no longer a fulltime investigator position within the Department. Rather, internal investigations are handled regionally and major investigations are contracted out to private investigation or security companies.

The interaction of the criminal and internal investigatory processes has been a difficult and vexing one for the Department for a number of years. The Correctional Services Division has taken a number of positive steps to clarify the interaction and to ensure that criminal investigations are carried out when required. The criminalization of the investigatory processes has had both positive and negative effects. Positive effects include, some opening up of what has otherwise been perceived as a closed and secret system, the generally salutary effect that the possibility of criminal ramifications has on the conduct of correctional officers and the higher credibility achieved from criminal investigations. On the other hand, the criminalization of investigations has had negative implications, including a tendency on the part of correctional authorities not to conduct administrative investigations into an incident if it is the subject of a police investigation and to view the non-laying of a charge as, in effect, approving of the correctional officer's conduct. A more robust form of internal review and better policies are required. This should be overseen by a new Director of Operational Review.

In addition to an effective investigation process following incidents, a well managed correctional

organization should have a pro-active method to ensure that its laws and policies are being observed In the past there was a well developed and active program of compliance review. A ninety-two page compliance checklist was used by an inter-disciplinary team when conducting their reviews. Furthermore, some seven years ago a proposal was discussed in the Department to supplement these reviews with self-audits conducted by the Superintendents on an even more frequent basis. The need for both of these types of reviews was recently the comment of a report regarding another province's correctional system. Unfortunately, in New Brunswick, the regular operational review program effectively ended some years ago and the self-audit program was never implemented. A new program of compliance review should be developed by the new Director of Operational Review, and it should include a self-audit program as well as departmental audits. A clear decision making process regarding recommendations arising from the reviews and a follow up system to ensure implementation are also required.

Accreditation of correctional facilities is a process, originally and most completely developed in the United States, whereby the performance of a particular correctional institution is tested against an externally established set of standards. These standards are well developed in the United States and are established by the American Correctional Association. There are no Canadian standards and no Canadian correctional institution is currently accredited using the ACA standards. Use of the ACA standards was recently recommended in a report regarding another province's corrections system. New Brunswick should consult with other provinces regarding the possibility of developing a "made in Canada" accreditation program and standard.

Like many correctional authorities, the Correctional Services Division does not make the most of the great deal of information it collects. There appears to be little in the way of standard useful management information generated within the division. Computer generated offender management information is very limited. Information gaps exist at the institutional as well as departmental level. These gaps inevitably restrict the ability of a department to proactively manage its affairs. Steps need to be taken to effectively utilize the new regional structure in order to distill and analyze management information. In the short term, the policies and procedures need to be revised to ensure that information collection practices are modernized and include issues of offender treatment, rights and legal compliance. In the longer term, an integrated computer based offender management system should be developed in co-ordination with the Integrated Justice Project and this management system should include issues related to offender rights and legal compliance.

The Correctional Services Division is plagued by another failing common to many correctional authorities; that of isolation from the public. Other correctional systems have developed structured approaches to ensuring the public is able to effectively provide advice to Superintendents and senior departmental officials as well as to the Minister. This public participation is particularly important in a provincial correctional system where all offenders will be returning to the general public in a relatively short period of time and where the vast majority of offenders are in the community on probation, parole or suspended sentence rather than in institutions. Regional Citizen Advisory Committees providing advice to Regional Directors and Superintendents and a Provincial Citizens Advisory Committee providing advice to senior departmental officials and the Minister would address this issue.

There is an offender grievance procedure which provides another method of internal quality assurance. However, the existence of this procedure is largely unknown by staff or offenders. The procedure should be properly grounded in law and offenders need to be advised of it in the offender handbook and through notices posted in institutions.

PART VII - EXTERNAL MONITORING MECHANISMS

The major, and really the only, public body other than the courts, that has the jurisdiction to review the conduct of the Correctional Services Division is the Office of the Ombudsman. The Ombudsman has a very broad jurisdiction over provincial government departments, boards and commissions, crown corporations, hospital corporations and municipalities. She also has duties under statutes other than the Ombudsman Act including the Civil Service Act, the Right to Information Act and the Official Languages Act. While the jurisdiction of the Ombudsman is very wide, her staff is small. She and her staff need to be generalists in order to address the wide range of complaints that her office must deal with.

Given the limitations of expertise and staffing it is not surprising that the Ombudsman has been able to engage in only a very limited role regarding correctional matters. Visits by staff of the Ombudsman to correctional institutions have been sporadic at best. The office is not equipped to engage in full investigations in correctional cases. They view their role as alerting the department to cases that may be falling through the cracks rather than conducting full investigations into complaints. The investigations that are conducted are related to individual, and somewhat minor complaints and do

not involve complex or systemic investigations. Unfortunately, this has resulted in the office having limited credibility with offenders and with the staff of the Correctional Services Division. Interviews with offenders confirmed that the Office of the Ombudsman is not seen as a vehicle to effectively investigate complaints because the office is not a visible presence within correctional institutions, does not have a reputation in addressing serious matters and offenders are otherwise unaware of the Ombudsman's role. To the Correctional Services Division, the Office of the Ombudsman lacks credibility because it is seen as being too quick to reach conclusions without conducting full and proper investigations and because it lacks correctional expertise.

The Office of the Ombudsman, as currently resourced and staffed, is in an untenable position in attempting to meet the expectation that it act as a source of investigatory redress for misconduct in the correctional system. Continuing with the current structure will only lead to further disappointment.

While the shortcomings relating to the Office of the Ombudsman could be addressed through additional staffing, a better response would be to establish a specialized Correctional Investigator. An expert Correctional Investigator is required due to the strength of the correctional culture and the traditional resistance of correctional authorities to change. As an effective monitor who has expertise in the correctional field, the correctional authorities could not dismiss the investigations conducted by the Correctional Investigator on the basis of lack of expertise. Furthermore, the investigator would be able to call upon the wide base of correctional knowledge in order to recommend creative solutions to the correctional authorities. The investigator would be less likely to over react at first

instance of a complaint by an offender given the relatively high proportion of offender complaints that are groundless. Finally, investigations would be given the priority demanded in respect of individuals that are in the complete care and control of the province but whose past conduct frequently means they do not elicit public sympathy or support.

The cost of a specialized investigator's office to the province could be reduced if the province were to enter into a co-operative arrangement with other Maritime Provinces. A joint Maritime Correctional Investigator would be the most economical alternative, would have by its very nature an interjurisdictional perspective and exposure, would achieve economies of scale resulting in an ability to have a small fulltime staff and would allow the jurisdiction of the respective province's Ombudsman Offices to be narrowed, thereby reducing their case loads. The Correctional Investigator's office would be a fairly small one, estimated at about six to eight staff for the Maritime Provinces. A legislated framework is required to create such an office and ensure it has access to the records and other investigatory tools required.

While many adult offenders are able to advocate on their own, this is not true for many young offenders. Youth advocacy is a growing field recognized in many jurisdictions in Canada as a needed measure to protect young persons who by reason of their stage of development and maturity are unable to appropriately ensure that their views and wishes are known and considered. Within the Department of the Solicitor General there is an informal internal youth advocacy role which has been carried out by the Co-ordinator of Young Offenders Programs. He has done, by all accounts, an admirable job but he, and others, recognize the conflicts of interest and limitations imposed by the

internal nature of this arrangement. The need for advocacy was expressed by administrative staff, frontline staff and community stakeholders.

Youth advocacy structures exist in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario and Quebec. Newfoundland is currently in the process of reviewing a recent legislative report on the issue. The issue of youth advocacy goes beyond youth corrections. The integration of youth corrections into the broader service network would be reinforced through a youth advocacy structure that had a wide mandate. Therefore while there is a need, in the short run, to formalize the advocacy structure within the corrections field it would be an incomplete approach, in the long run, to pursue it in isolation from other aspects of services to young people. Optimally, the advocacy structure should be separate from any service provider ministry of the government. The cost of the advocacy structure need not be large. A youth advocate appointed under a new Youth Advocacy Act is recommended.

PART VIII - CONCLUSIONS AND NEXT STEPS

This report recommends a number of changes. These changes involve a range of legal, operational, management and training initiatives. In order to accomplish such a significant range of changes it is important that the department develop a comprehensive, coherent and reasonable implementation plan. Not all recommendations can be implemented at the same time. Some recommendations are straight forward, others require more time. Furthermore, some recommendations have to follow the implementation of other changes. A plan for implementation is suggested.

Finally, it should be noted that the field of corrections is one that too rarely is the subject of public scrutiny and review. Generally, only when the correctional system is the subject of criticism is it noticed. This could be alleviated to some extent by ensuring that the implementation of this report is done in an open manner and culminates with a public review by a legislative committee.

RECOMMENDATIONS

With regard to the administrative segregation of adult offenders it is recommended that:

1. The Corrections Act be amended to:

   (a) Include a statement of the purpose of administrative segregation and that the purpose statement be modelled on Subsection 31(1) of the federal Corrections and Conditional Release Act;

   (b) Include a provision that requires the Superintendent to end the placement of an offender in administrative segregation at the earliest appropriate time. This amendment to the Corrections Act should be modelled on Section 20 of the Manitoba Correctional Institutions Regulations;

   (c) Include criteria for placement in administrative segregation and that the criteria be modelled on Section 21 of the Manitoba Correctional Institutions Regulations. Section 19 of New Brunswick Regulation 84-257 should be repealed on proclamation of this provision; and,

   (d) Provide that, where an individual is placed in administrative segregation, initial and subsequent reviews shall be held in accordance with the manner prescribed by Regulation and that these reviews shall be by way of a hearing at which an offender is entitled to be present, subject to dangerousness and security considerations. The amendment to the Corrections Act should be modelled on Section 33 of the Corrections and Conditional Release Act.

2. Regulation 84-257 be amended by:

   (a) Enacting a new Section 20.1 to provide that, where a Superintendent is not in the institution during any 24 hour period specified in Section 20, the review required by Section 20 shall be discharged by the senior person on duty during that period;

   (b) Enacting a new Section 20.2 to provide that, where an offender is still in segregation 5 days from the time that they are initially placed in segregation, the Superintendent shall conduct a hearing to review the offenders case and shall conduct subsequent hearings every 10 days during which the offender is segregated. This new section in the Regulation shall be modelled upon Section 23(1) and (2) of the Manitoba Correctional Institutions Regulations, except that the time periods are to be as set out in this recommendation and not as set out in the Manitoba Regulation; and,

   (c) Enacting a new Section 20.3 to provide that, at the conclusion of each 10 day review the Regional Director shall be required to decide whether the legal conditions for

segregation have been met and at the conclusion of every period of 30 days from commencement of the segregation the Director of Correctional Services shall decide whether the legal conditions have been met.

3. Forms be established for the Superintendent's daily review and the 5, 10 and 30 day hearings and that these forms contain sections that are to be completed in order to ensure that decision makers address the legal standards involved.

4. With regard to the obligation to visit the segregation area daily:

   (a) Regulation 84-257 be amended to

      (i) Specifically require Superintendents to:

         A. conduct a visit of the segregation area at least once every 24 hours when an offender is in the segregation area;

         B. meet with offenders on request during such visits; and

         C. consider the results of such visits when discharging their obligations under Section 20;

      (ii) Provide that the obligation to visit segregation shall be carried out only by the senior institutional personnel other than the Superintendent only in the event that the Superintendent is not on the premises of the institution during that 24 hour period; and,

      (iii) Provide that a health care professional visit the segregation area at least once every day;

   (b) Compliance with these provisions shall be considered part of the performance appraisal for the Superintendent, health care professional and other senior correctional personnel who discharge this function.

5. Regulation 84-257 be amended to establish the conditions of custody in administrative segregation and that the amendment be modelled on Section 36 of the British Columbia Correctional Centre Rules and Regulations together with the general principle statement in the form of Section 38.1(3) of the British Columbia Regulations for matters not enumerated in Section 36.

6. A new section be added to the Adult Institutional Policy and Procedures Manual which is in a separate part from the discipline part of the manual and deals specifically with administrative

segregation as established by the amended Statute and Regulations. This new Policy and Procedures Manual should contain a departmental set of forms which require correctional staff to state the legal authority for placement in segregation, detail the review of that placement and describe the treatment of the offender while in segregation. The new policy should be sufficiently clear and unequivocal so that non-compliance by staff with the provisions can be the subject of employee discipline.

7. Each Superintendent shall promulgate a new standing order on administrative segregation within 30 days of the coming into effect of the new province wide Policy and Procedures section on administrative segregation recommended above. This Standing Order shall indicate precisely how the law, regulations and province wide Policy and Procedures are to be implemented in the specific institution. Given the importance of this issue, the standing order shall be submitted to the Regional Director for approval and completion of this task shall be part of the Superintendent's performance review.

With regard to the administrative segregation of young offenders it is recommended that:

8. The Custody and Detention of Young Persons Act be amended to address the issue of segregation of young persons in places of temporary detention and secure custody and that these amendments be similar to the amendments recommended for the Corrections Act, above.

9. Regulation 92-71 be amended by:

   (a) Repealing Sections 6 and 7;

   (b) Enacting a regulation that would apply to administrative segregation in places of secure custody and temporary detention;

   (c) Requiring that a Superintendent review the circumstances of young persons placed in segregation once every hour;

   (d) Providing that, in the absence of the Superintendent, the hourly review shall be discharged by the senior person on duty during that period;

   (e) Providing that a young person shall not be kept in administrative segregation for a period that exceeds 8 hours in any 24 hour period or an aggregate of 24 hours in a given week unless an interdisciplinary review team has reviewed the case and is satisfied that:

      (i) placement in segregation is in compliance with the Custody and Detention of Young Persons Act and these Regulations;

(ii) the young persons behaviour warrants placement in segregation,

(iii) at least one less intrusive alternative has been attempted without success in improving the young persons behaviour; and,

(iv) no other less intrusive alternative is practicable;

(f) Providing that, in conducting its review, the review team shall hold a hearing at which the young person is entitled to be present, subject to dangerousness and security considerations, and the review team shall notify the youth advocate so that the youth advocate may make representations in person, by telephone or in writing;

(g) Providing that the review team authorization for continued placement in segregation is valid for a period of 24 hours on each review by the review team; and

(h) Providing that, in addition to the daily review and the hearing by the review team, segregation shall be subject to the following durational maxima:

(i) on the approval of the Regional Director after 24 hours and for up to a total duration of 48 hours;

(ii) on the approval of the Director of Youth Corrections, 72 hours;

(iii) on the approval of the Assistant Deputy Minister, Correctional Services, unlimited, subject to written reconsideration of whether the legal criteria are met every 24 hours.

10. Forms be established for the review teams daily review and the escalating hierarchical review and that these forms contain sections that are to be completed in order to ensure that decision makers address the legal standards involved.

11. The obligation to visit a young offender in segregation be improved by:

(a) Amending Regulation 92-71 to:

(i) specifically require Superintendents or Deputy Superintendents to conduct a visit of segregation at least hourly when a young offender is in the segregation area (except during the period of midnight to 7 a.m.) and that the Superintendent or Deputy Superintendent shall meet with young offenders on request during such visits and that the results of such visits shall be considered when discharging their obligation to conduct the hourly reviews as recommended above;

(ii) provide that the obligation to visit segregation shall be carried out by the senior institutional personnel other than the Superintendent or Deputy Superintendent only when the Superintendent or Deputy Superintendent is not on the premises of the institution during the hourly period; and,

(iii) provide that a nurse visit the segregation area at least once every day;

(b) Ensuring that compliance with these provisions is considered as part of the performance appraisal for the Superintendent, nurse and other senior correctional personnel who discharge this function.

12. Regulation 92-71 be amended to:

(a) Provide that the review procedures recommended above do not apply to the routine locking of rooms or units in an institution;

(b) Provide that the reviews required above do not apply where a young person has consented in writing to their placement in administrative segregation provided the following preconditions are met:

(i) the youth advocate has been contacted and has discussed the placement in segregation with the young person either in person or by telephone;

(ii) where possible, the young persons' parent or guardian has been contacted and has met with the young person; and

(iii) the Superintendent is of the view that consensual placement in segregation is appropriate and required for the safety of the young person;

(c) Limit the consensual placement of a young person in segregation to a maximum period of 5 days.

13. Regulation 92-71 be amended to establish the conditions of custody in administrative segregation and that the amendment be similar to that proposed with respect to adult offenders.

14. Section B-16 of the Young Offender Institutional Policy and Procedures Manual be repealed and replaced with a new section which:

(a) Deletes reference to Regulation 84-257 which has no application to young persons in custody;

(b) Is revised in accordance with the statutory and regulatory changes recommended

above;

(c) Contains a departmental set of forms requiring correctional staff to state the legal authority for placement in segregation, review of that placement, operation of the review team and treatment of offenders while in segregation in accordance with the law;

(d) Eliminates reference to restraint equipment which shall be dealt with in a separate part;

(e) Is separate from the policy with respect to disciplinary dissociation and which therefore provides that the privileges of administratively segregated young offenders are to be preserved to the maximum degree possible; and

(f) Is sufficiently clear and unequivocal so that non-compliance by staff of the provisions could be the subject of employee discipline.

15. All Standing Orders at the Saint John Regional Correctional Centre and the New Brunswick Training School regarding segregation be repealed (except those aspects dealing with purely administrative matters) on the enactment of the revisions of the Youth Offender Institutional Policy and Procedures Manual recommended above; Superintendents may issue orders in respect of administrative segregation in emergency situations that are consistent with the law.

[redacted]

With regard to the adult institutional misconduct system it is recommended that:

19. The Correctional Services Division develop, as part of training for Deputy Superintendents and Superintendents, training on the adult institutional misconduct system with particular emphasis on how to conduct fair institutional misconduct hearings under section 14 of the regulation.

20. Superintendents conduct regular staff training sessions on the misconduct process to ensure

that all staff are familiar with the legal requirements

21. Staff at the Saint John Regional Correctional Centre be permitted to submit a misconduct charge in accordance with existing policy G-1.5 of the Institutional Policies and Procedures Manual.

22. The following improvements to the misconduct system in adult institutions be made:

(a) Regulation 84-257 be amended as follows:

(i) Section 16(1)(e) of the regulation under the Corrections Act be amended to provide for a penalty of disciplinary segregation for a definite period of time, not to exceed five days without the prior approval of the Regional Director and, in any case, not to exceed thirty days;

(ii) Paragraph 16(1)(f) be amended to provide for loss of remission, not to exceed ten days without the prior approval of the Regional Director and, in any case, not to exceed thirty days;

(b) Subject to the changes required by the above changes to the regulations, the draft amendment to the Institutional Policies and Procedures Manual section G-1, G-2, G-3, G-4 and G-5 be issued to replace the existing policy as soon as possible.

(c) All institutional misconducts be heard by Superintendents or Deputy Superintendents except by reason of extended absence from the institution such that they would not be able to hear the matter within seventy-two hours in which case the misconduct be adjudicated by the Acting Superintendent;

(d) A set of ministry forms be developed regarding the institutional misconduct process for use by front line staff, investigating Shift Supervisors and the hearings conducted by Superintendents. These forms should be structured so that the individual completing them must address all legal and policy requirements in order to properly complete the form;

(e) The institutional misconduct process, including offender infractions and misconducts, should be clearly stated in the revised offender handbook;

(f) The Correctional Services Division request that the federal government introduce an amendment to s. 6 of the Prisons and Reformatories Act in order to permit a province to provide for a suspension of eligibility to earn remission as a penalty for an institutional misconduct; and,

(g) If the Prisons and Reformatories Act is amended as recommended above, Regulation

84-257 be amended by adding a new paragraph 16(1)(g) to provide that, with the approval of the Regional Director, a Superintendent may impose a penalty of suspension of the eligibility of an offender to earn remission for a period of up to two months where the offender does not have sufficient remission standing to his or her credit such that remission could be forfeited pursuant to paragraph 16(1)(f).

With regard to the institutional misconduct system for young offenders in places of temporary detention and secure custody it is recommended that:

23. The following improvements be made to the youth institutional misconduct system:

(a) Regulation 92-71 be amended to eliminate the distinction between facilities of temporary detention and facilities of secure custody and provide a common approach for misconduct proceedings in both types of facilities operated by the Correctional Services Division;

(b) Regulation 92-71 be amended to prescribe the terms of non-offence based behaviour management programs, providing sufficiently clear limits on the adverse consequences that can result to a young person under such programs so as to protect the young person's constitutional rights;

(c) If the offence based misconduct system is to be retained, in whole or in part, Regulation 92-71 be amended to clearly provide that a young person be advised in writing whether the offence based system, or one or more alternative schemes prescribed by Regulation apply to any particular young person, so that the young person and the staff are aware which scheme of law applies to that person;

(d) If the offence based system is to be retained, a three day maximum duration in segregation be included as an available punishment in the Regulation for a young offender found to have committed a misconduct;

(e) The Correctional Services Division compile a report surveying youth correctional jurisdictions across Canada regarding creative alternatives to offence based behavioural management systems for young persons;

(f) During the upcoming transition period, through the opening of the new youth centre, annual reviews be conducted of the misconduct Regulations, policies and state of training to ensure that dissonance does not develop between the law, departmental goals and actual frontline behaviour;

(g) Training of administrators and staff be conducted on new youth behavioural management philosophies and techniques and on the revised regulations;

(h) Forms be developed to ensure that any adverse consequences for young persons are authorized by law and are properly documented; and,

(i) Youth behavioural management process, including the traditional misconduct process as well as any alternatives prescribed by regulation, be clearly stated in the new youth offender handbook.

With regard to the physical or chemical restraint of adult offenders it is recommended that:

24. With respect to the principles regarding restraint of offenders that should be enshrined in statute, the Corrections Act be amended to:

(a) Prohibit restraint of an offender as punishment; this provision could be modelled on section 68 of the Corrections and Conditional Release Act;

(b) Prohibit participation in any cruel, inhumane or degrading treatment or punishment of an offender; this provision could be modelled on section 69 of the Corrections and Conditional Release Act;

(c) Prohibit the use of any restraint equipment except for types of restraint equipment approved by the Solicitor General by way of a Ministerial Certificate; and,

(d) Prohibit use of force or restraint except in accordance with the regulations made under the Corrections Act or as otherwise permitted by law.

25. A new section of Regulation 84-257 under the Corrections Act be added which would address the issues of restraint in a correctional institution. The regulation shall provide that:

(a) Restraint may only be used in accordance with that section;

(b) Restraint equipment may only be of the type authorized by the Minister's Certificate established under the Act;

(c) The amount and type of restraint used shall be reasonable and not excessive having regard to all the circumstances of the case;

(d) Restraint shall only be permitted in order to:

(i) prevent an escape from a correctional institution or from an escorted temporary absence;

(ii) where an officer is permitted to use force under section 21 of the regulations and restraint is required as an adjunct to that use of force;

(iii) subject to item (e), below, to prevent an offender from harming themselves.

(iv) subject to item (f), below, to prevent an offender from damaging property.

(e) Where restraint is used to prevent an offender from harming themselves as set out in criteria (d) (iii), above, it shall not be used except if the following circumstances are met:

(i) A. an assessment under the Mental Health Act has been scheduled to take place within the next twenty-four hours; or,

B. an assessment under the Mental Health Act has been conducted and the individual has not met the criteria for admission to a facility under the Mental Health Act or has been admitted and subsequently returned to the correctional institution;

(ii) the offender is seen, at a minimum, every thirty minutes by a health care professional;

(iii) the offender is seen every four hours by a mental health professional who is not the same person as the health care professional referred to in (ii) above;

(iv) the individual is under continuous supervision by a correctional officer;

(v) the order to restrain the individual is made by the Superintendent personally, or in his or her absence, the Regional Manager;

(vi) in the case of restraint extending beyond four hours the order to continue restraints is made by the Regional Manager;

(vii) in no case shall restraint use extend beyond twelve hours for this purpose.

(f) Where restraint is used to prevent an offender from wilfully damaging property as set out in criteria (d)(iv), above, it shall not be used except if all the following circumstances are met:

(i) the offender has previously been found to have committed a misconduct under section 13(b), (n) or (w) (where the attempt was to do anything referred to in paragraph (b) or (n)),

(ii) the offender again begins to damage property;

(iii) the anticipated damage to property is substantial;

(iv) the threat to damage property is immediate;

(v) the order to restrain the offender is made by the Superintendent personally, or in his or her absence, the Regional Manager;

(vi) the offender is under continuous supervision by a correctional officer;

(vii) the restraint does not exceed four hours in duration.

(g) In every case of restraint:

(i) under criteria (d)(iii) (prevention of self-harm) regardless of duration;

(ii) under criteria (d)(iv) (prevention of damage to property) regardless of duration; or,

(iii) under criteria (d)(ii) (pursuant to s.21) that exceeds four hours;

the Superintendent shall advise the Correctional Investigator of the case.

26. In order to ensure health care support when offenders are restrained to prevent self-harm:

(a) Nurses be placed on an on-call rotation to ensure attendance on a 24 hour a day basis where required; and,

(b) Arrangements be concluded with physicians to ensure that they will attend at the institution any day of the week to determine whether an assessment under the Mental Health Act should be ordered.

27. Section 21(a) of Regulation 84-257 be repealed and replaced with the words "(a) restore order within a correctional institution".

28. With respect to the permitted types of restraint equipment in adult correctional facilities:

(a) On proclamation of the appropriate statutory amendments a Minister's certificate be issued which by general type of restraint equipment, specific manufacturer, model and any necessary modifications establishes a list of permitted types of physical or chemical restraint;

(b) That the types of restraint equipment permitted include only:

(i) handcuffs;

(ii) leg irons;

(iii) soft handcuffs;

(iv) soft leg restraints

(v) soft cuffed restraint belts

(vi) waist chains;

(vii) protective headgear or helmets;

(viii) Oleoresin Capsicum;

(c) That the Solicitor General order restraint board use be terminated immediately and the restraint boards be removed from the institutions.

29. The Solicitor General's certificate be valid only for a period of two years and that an assessment be done of the suitability of the list of approved equipment prior to each issuance of a new certificate.

30. The policy on restraint equipment in the Adult Institutional Policy and Procedures Manual be repealed and replaced with a new policy that:

(a) Reflects the statutory and regulatory changes set out above;

(b) Clearly indicates those requirements that are established by law so that front line staff know what requirements are a matter of law and what are departmental policy;

(c) Provides that restraints may only be applied in accordance with the statute, regulation and the policy and that non-compliance with any of these shall be the subject of employee discipline;

(d) Requires Superintendents ensure that all staff are fully trained on the law and policy regarding restraint;

(e) Provides that prior to restraints being applied the Superintendent is satisfied that;

(i) all other less restrictive alternatives have been considered and rejected;

(ii) the legal criteria for restraint have been met;

(iii) the health care unit has been contacted to determine whether restraint is

contraindicated in respect of the particular offender;

(iv) a pre-restraint briefing has been held of all staff involved; and,

(v) authorization has been sought in writing pursuant to a new form to be developed which shall include a section for a Shift Supervisor to request the application of restraints in accordance with the stated legal criteria, shall cite all procedural steps required by law or policy and shall include a section for Superintendent approval and for subsequent renewals by Regional Directors and the Director of Adult Institutions;

(f) Shall require videotaping of all restraint usage;

(g) Except in the case of offenders who are restrained to prevent self-harm or to prevent property damage where the durational maxima in the regulations shall apply, in all other cases restraint shall be subject to the following durational maxima:

(i) on the approval of the Superintendent, four hours;

(ii) on the approval of the Regional Manager, twelve hours;

(iii) on the approval of the Director of Adult Institutions, seventy-two hours;

(iv) on the approval of the Assistant Deputy Minister, Correctional Services, unlimited, subject to written reconsideration of whether the legal criteria are met every twenty-four hours;

(h) An offender who is restrained shall be continuously supervised by at least one correctional officer, except in the case of an institutional emergency such as a riot where one on one staff dedication would not be feasible until alternative staffing arrangements can be made;

(i) Every application of restraint shall be the subject of a written report by each officer involved and these reports shall be referred by the Superintendent to the post-restraint review team recommended below;

(j) Following every restraint usage, an inter-disciplinary review team shall be established which shall review and report on use of restraint and shall make a finding that either all legal and policy requirements were or were not complied with. In order to ensure the independence of the review team the report shall be made to the individual to whom the highest ranking person who authorized restraints in a particular incident reports. The review shall be modelled on the June, 1996, State of California Department of Corrections Policy entitled "Use of Force - Executive Review";

(k) The review team shall be required to review all aspects of the incident including all reports, offender statements and the incident videotape; and,

(l) With respect to the use of Oleoresin Capsicum, the Correctional Services Division policy as set out in Directive 94-01 be amended by requiring that:

(i) where a Superintendent or Deputy Superintendent is not available to authorize the use of Oleoresin Capsicum, it is only to be used with the authorization of the Regional Manager, not the Shift Supervisor;

(ii) except in the case of an emergency where clearance would not be feasible, clearance be obtained from the health care unit regarding contraindications prior to Oleoresin Capsicum use;

(iii) Regional Managers by inserted into the command chain regarding notification of use of Oleoresin Capsicum if authorized by a Superintendent; and,

(iv) the post-incident review as set out above regarding mechanical restraints also be made applicable to Oleoresin Capsicum use along with all reporting requirements.

31. Each Superintendent examine any standing orders touching on the use of restraint and that these standing orders either be repealed given the changes recommended above, or where it is necessary to retain the order to deal with purely administrative matters, the order be amended to note that it is subject to the new law and policy.

With regard to the use of restraints on young offenders in facilities of temporary detention and secure custody it is recommended that:

32. The Custody and Detention of Young Persons Act be amended by:

(a) Making amendments to that Act similar to those recommended in respect of the Corrections Act regarding restraints, above;

(b) Enacting a provision requiring that notice, and a copy of prescribed records, be given to the youth advocate following a use of restraints of a type specified by regulation; and

(c) Adding a regulation making power to effect recommendation (b).

33. Regulation 92-71 under the Custody and Detention of Young Persons Act be amended to address the issues of restraint in a youth correctional institution. The regulation shall provide

that:

(a) Restraint may only be used in accordance with that section;

(b) Restraint equipment may only be of the type authorized by the Minister's Certificate established under the Act;

(c) The amount and type of restraint used shall be reasonable and not excessive having regard to all the circumstances of the case;

(d) Restraint shall only be permitted in order to:

(i) prevent an escape from a correctional institution or from an escorted temporary absence;

(ii) where an officer is permitted to use force under section 33 of the regulations and restraint is required as an adjunct to that use of force;

(iii) subject to item (e), below, to prevent an offender from harming themselves;

(iv) subject to item (f), below, to prevent an offender from damaging property;

(e) Where restraint is used to prevent an offender from harming themselves as set out in criteria (d) (iii), above, it shall not be used except if the following circumstances are met:

(i) A. an assessment under the Mental Health Act has been scheduled to take place within the next twenty-four hours; or,

B. an assessment under the Mental Health Act has been conducted and the individual has not met the criteria for admission to a facility under the Mental Health Act or has been admitted and subsequently returned to the correctional institution;

(ii) the offender is seen, at a minimum, every thirty minutes by a health care professional;

(iii) the offender is seen every four hours by a mental health professional who is not the same person as the health care professional referred to in (ii) above;

(iv) the individual is under continuous supervision by a correctional officer;

(v) the order to restrain the individual is made by the Superintendent personally,

or in his or her absence, the Regional Manager;

(vi) in the case of restraint extending beyond four hours the order to continue restraints is made by the Regional Manager;

(vii) in no case shall restraint use extend beyond twelve hours for this purpose;

(f) Where restraint is used to prevent an offender from wilfully damaging property as set out in criteria (d)(iv), above, it shall not be used except if all the following circumstances are met:

(i) the offender has previously been found to have committed a misconduct under section 12(1)(b), (m) or (w) (where the attempt was to do anything referred to in paragraph (b) or (m));

(ii) the offender again begins to damage property;

(iii) the anticipated damage to property is substantial;

(iv) the threat to damage property is immediate;

(v) the order to restrain the offender is made by the Superintendent personally, or in his or her absence, the Regional Manager;

(vi) the offender is under continuous supervision by a correctional officer;

(vii) the restraint does not exceed four hours in duration;

(g) Except in cases of routine restraint of young persons when they are transported outside a correctional institution and except in cases of emergency, restraints not be used on a young person except upon the approval of an inter-disciplinary review team;

(h) The review team shall not approve the use of restraints unless it is satisfied that:

(i) use of the restraint is in compliance with the Custody and Detention of Young Persons Act, and these regulations;

(ii) the young person's behaviour warrants use of the restraint;

(iii) at least one less intrusive alternative has been attempted without success in improving the young person's behaviour;

(iv) no other less intrusive alternative is practicable; and

(v) there are reasonable grounds to believe the procedure would improve the young person's behaviour;

(i) In the event of an emergency that, in the opinion of the Superintendent, would mean that the delay occasioned by the review team would cause the young person, another offender or a staff member serious mental or physical harm that the restraint may proceed if, in the Superintendent's opinion, the legal requirements have been met and the review team conducts a post facto review as soon as possible thereafter;

(j) The Superintendents be required to forward

(i) all review team reports;

(ii) reports of all emergency restraints precluding a prior approval of the review team;

to Regional Directors;

(k) Subject to paragraph (l), notice be given to the Youth Advocate and to the Correctional Investigator whenever restraints are used on a young person in custody;

(l) Paragraph (l) shall not apply to the routine application of restraints applied for the purpose of taking a young person outside the facility such as for attendance at court or for the purpose of receiving health care;

(m) Section 33(2)(a) of Regulation 92-71 be repealed and replaced with the words "(a) restore order within a youth custodial facility";

(n) Section 33(2) of the Regulation 92-71 be expressly made subject to the new regulation on restraint.

34. In order to ensure health care support when offenders are restrained to prevent self-harm:

(a) Nurses be placed on an on-call rotation to ensure attendance on a 24 hour a day basis where required; and,

(b) Arrangements be concluded with physicians to ensure that they will attend at the institution any day of the week to determine whether an assessment under the Mental Health Act should be ordered.

35 Regulation 92-71 under the Custody and Detention of Young Persons Act be amended by providing that where notice is given to the youth advocate regarding the use of restraints, all records pertaining to the incident shall be made available to the youth advocate at the same

time notice is given and that any records not completed at the time notice is given shall be provided to the youth advocate as soon as they are completed. The regulation shall specify that the general requirement to make available all records includes:

(a) all incident reports;

(b) any statements taken from staff, offenders or any other individual;

(c) all health care records related to the incident;

(d) the videotape of the incident;

(e) the report of the review team which reviewed the restraint use.

36. Regarding permitted forms of restraint for young offenders:

(a) The Solicitor General execute a certificate under the new provision recommended for inclusion in the Custody and Detention of Young Persons Act prescribing the forms of physical and chemical restraint permissible in youth correctional facilities and that the approved forms of restraint be:

(i) handcuffs;

(ii) leg irons;

(iii) soft handcuffs;

(iv) soft leg restraints;

(v) soft cuffed restraint belts;

(vi) waist chains;

(vii) a protective head gear or helmet;

(viii) Oleoresin Capsicum (subject to (c), below).

(b) Handcuffs and leg irons, either of the hard or soft variety not be permitted for use in a form of a four or five point restraint or by linking the two restraints together in the manner commonly known as "hogtying";

(c) Oleoresin Capsicum use be eliminated from youth correctional facilities except by Crisis Intervention Teams which shall be deployed only on the order of the

Superintendent, or in his or her absence, the Regional Manager; and,

(d) Pending the proclamation of the provision establishing the Minister's certificate of approved restraint equipment the Solicitor General issue an interim policy banning the use of Oleoresin Capsicum in youth correctional facilities except by a trained Crisis Intervention Team but that, prior to doing so, appropriate training, policy development and management support be instituted to support more appropriate forms of behaviour management of young persons.

(e) The Solicitor General order restraint board use be terminated immediately and the restraint boards be removed from the institutions.

37. The applicable sections of the Young Offender Institutional Policy and Procedures Manual regarding use of force, restraint equipment, emergency/protective equipment and Mace all be amended:

(a) To reflect the new statutory and regulation requirements recommended above;

(b) In a manner similar to the recommendation regarding the revised policy manual for adult offenders, above, except where the recommended changes to the act or regulations for young offenders differ from that applicable to adult offenders.

38. A new section of the Young Offender Institutional Policy and Procedures Manual on restraint be issued that:

(a) Contains a section on each of the New Brunswick Training School and the Young Offenders' Unit at the Saint John Regional Correctional Centre;

(b) Incorporates the best aspects of the current provincial and local policies and detail how the policy is to be operationalized in each of those two institutions and that this policy be approved by senior members of the department;

(c) Any changes to the policy desired by the local level will have to be approved and incorporated in the changed provincial manual rather than through local standing orders.

39. All standing orders at the Saint John Regional Correctional Centre and the New Brunswick Training School regarding restraint be repealed on the enactment of the revisions to the Policy and Procedures Manual recommended above; Superintendents may issue orders in respect of restraint and use of force matters in emergency situations that are consistent with the law.

With regard to programs available for adult and youth offenders in institutions it is recommended that:

40. Current programming be assessed and, if necessary, be re-designed, in order to develop and implement programming structured to reduce the anxiety and frustration levels of all offenders in custody, with particular attention to the specific needs of youth.

41. Consistent, regular and on-going programming for all offenders should be offered in life skills, conflict resolution and anger management.

With regard to staffing within correctional institutions it is recommended that:

42. The practice of assigning employees to work in teams for six month units continue.

43. Physical fitness incentive programs for staff be implemented and code response teams include staff who by training and personal qualities are skilled in non-violent conflict resolution.

44. A trained video camera operator be designated to every shift and that the individual be part of, but in addition to the balance of, the code response team.

45. Except in the case of emergencies, it be made clear to staff that, even where the Deputy Superintendent or Superintendent is present at the scene of an incident, the Shift Supervisor remains in charge of staff deployment and instruction; the Deputy Superintendent and Superintendent should direct any instructions regarding incident management to the Shift Supervisor.

46. Section 17 of the Civil Service Act be amended to create a sufficiently broad regulation making authority to prescribe exceptions to s. 17(3) on an employee-class basis.

47. The Correctional Services Division initiate discussions with the Departments of Health and Community Services, the Attorney General and other Divisions of the Department for a cross placement and secondment program between their staffs that work in institutional or residential settings or in other parts of the justice system.

48. With respect to Shift Supervisors:

(a) The position description of Shift Supervisor be revamped to address the modern realities of the job;

(b) Once the position description has been revamped, a centralized process of selecting supervisory staff and assessing the qualifications of candidates for the position be undertaken;

(c) A formal training needs assessment be carried out for all existing Shift Supervisors with particular emphasis on supervisory training in a correctional environment;

(d) The needs assessment be followed with formal supervisory training for those Shift Supervisors who require it;

(e) A formal training program be instituted for new Shift Supervisors with particular emphasis on supervisory training in a correctional environment;

(f) The training for both existing and new Shift Supervisors be subject to testing: unsatisfactory results on the testing will result in the individual not being promoted to the new Shift Supervisor position;

(g) The centralized recruitment recommended in paragraph (b) above, take place promptly, and remain current, so that use of Acting Shift Supervisors is minimized;

(h) Shift Supervisors be regularly seconded to another correctional institution to increase the breadth and depth of their knowledge and experience; and,

(i) The Civil Service Act be amended to exclude Shift Supervisors from the bargaining unit.

With regard to mental health services in correctional institutions it is recommended that:

49. Arrangements be made with the Mental Health Division to ensure that adult offenders are able to be detained in the new forensic unit at Restigouche Hospital notwithstanding that they are there not by reason of unfitness or not criminally responsible by reason of mental disorder but rather are sentenced or remanded offenders requiring high security and acute mental health treatment.

50. The Correctional Services Division initiate discussions with the Correctional Service of Canada to develop an administrative arrangement for placement of adult provincially sentenced offenders requiring high security and mental health treatment to the Regional Treatment Centre at Dorchester Penitentiary.

51. The Joint Standing Committee on Forensic Services meet as soon as possible to develop a forensic program framework.

52. Decisions taken as a result of the Joint Standing Committee on Forensic Services should be communicated to front line correctional staff by the issuance of a regular report by the committee.

53 Regional Directors take the lead in developing regional forensic service committees comprised of police, Crown Attorneys, the defence bar, the Bench and mental health officials.

54. Every Superintendent commence discussions with the local community mental health centre to establish a written protocol for accessing mental health services for correctional institution offenders. All written protocols shall be submitted by the Superintendents to their Regional Director and completion of this task shall be considered as part of the Superintendent's Performance Appraisal for 1997.

55. The Joint Committee on Forensic Services address the issue of treatment for offenders who are mentally incapable of giving or withholding consent and develop a plan to address the problems it is causing in correctional facilities.

56. The Department of the Solicitor General establish, as a priority training initiative for 1997/98, training in mental health issues. This training should be done in an inter-disciplinary format with assistance from clinicians and administrators of the Mental Health Division. Trainees should include front line correctional officers, Shift Supervisors, administrators and correctional nurses and should include existing and new staff.

57. The Correctional Services Division immediately take steps to ensure that the Integrated Justice project develops and fosters a component related to mental health services in the justice system.

With regard to the legal obligation to detain young offenders separate and apart from adult offenders it is recommended that:

58. With respect to the placement of young offenders in the same Correctional Institution as adult offenders, as is currently the case at Saint John Regional Correctional Centre:

(a) Such practice be ended as quickly as possible and the young offenders transferred to the new youth centre;

(b) In the interim, until the new youth centre opens,

(i) the dedicated staffing model be supported with appropriate training;

(ii) for non-young offender staff who come into contact with young persons only occasionally, specific training modules be set up targeted at the likely area of the interaction with young offenders (i.e. admissions; health care; use of force) and that an inventory be maintained of which officers have received which training so that Shift Supervisors can make appropriate staffing decisions;

(iii) improved control mechanisms be developed and strictly adhered to in order to ensure that young offenders and adult offenders are kept fully separate and apart by sight, sound and physical contact as required by the Young Offenders Act;

(iv) young offenders who are being segregated, not be segregated in the current segregation unit of the Saint John Regional Correctional Centre but rather be placed in a specialized unit for young persons;

(v) until a young offender segregation unit is implemented, where a young person is detained in the current segregation unit no adult offenders shall be detained in any of the four cells in that unit;

(vi) steps be taken to ensure that the confidentiality of the identity of young persons is maintained by ensuring that, for example, members of the public visiting adult offenders are not able to see young offenders walking in the hallways of the Saint John Regional Correctional Centre as is currently the case;

(c) If young persons are to continue to be detained in Unit 5B of the Saint John Regional Centre,

(i) an Order-in-Council be obtained designating it as a place of temporary detention and secure custody;

(ii) steps be taken to ensure that the separate and apart obligation is satisfied particularly as it relates to the adult female offenders in Unit 5A.

With regard to ensuring that offenders are advised of their rights and responsibilities it is recommended that:

59. The adult and youth offender handbooks be amended as follows:

(a) The offender handbook be revised including revisions required by the implementation of this report;

(b) A provincial young offender booklet be developed;

(c) All offenders be advised of the existence of the booklet on admission;

(d) Notices be placed in all living units that the offender handbook is available upon request;

(e) The provincial handbooks be supplemented by an institution specific information sheet that would specify matters particular to that institution such as living unit routine.

60. Offenders have access to the law and departmental policies as follows:

(a) The revised offender handbook state that offenders may have access to the Corrections Act and Regulations thereunder, the Custody and Detention of Young Persons Act and Regulations thereunder, the Criminal Code, the Prisons and Reformatories Act and the Young Offenders Act upon request. Institutions shall make available current copies of these statutes and regulations to offenders upon request.

(b) Following the comprehensive revision of the adult corrections and youth corrections policy and procedures manuals, the offender handbooks be amended to advise offenders that these manuals are available upon request, except for sections relating to security matters.

With regard to security and physical plant issues it is recommended that :

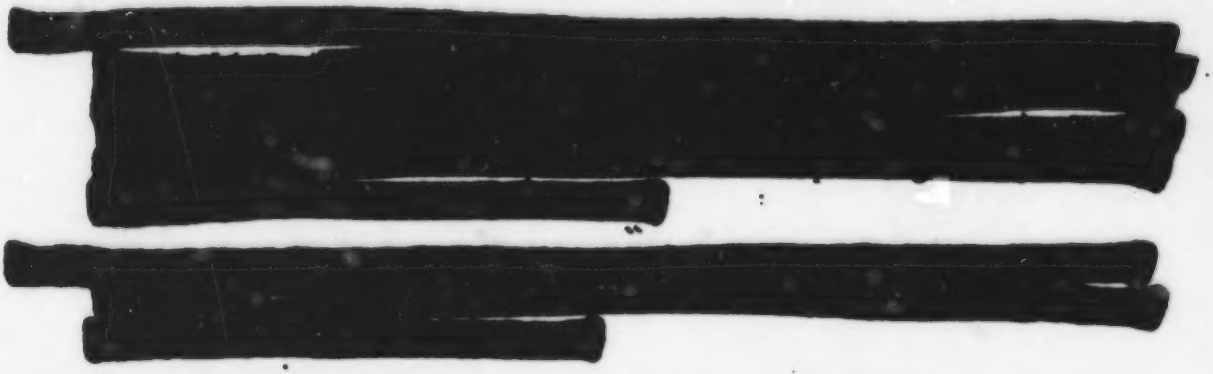
61. In order to ensure that institutional security issues are addressed:

(a) Each institution that is to remain following the upcoming closures, be the subject of a proper and complete security review in 1997;

(b) Deficiencies identified in the security reviews, particularly as they relate to public safety, or those that lead to staff perceiving that they need to engage in compensating behaviours such as using force, be addressed as soon as possible.

62. Toilets and sinks be converted from porcelain to stainless steel units as required.

63. Advice be sought from correctional fire safety experts with respect to redesigning the sprinkler heads so as to prevent offender tampering while not resulting in other difficulties such as providing a ceiling fixture on which to attach a ligature.



With regard to the impact of segregation and restraint on female, aboriginal and racial minority offenders it is recommended that:

66. Following the implementation of the new management information system, the Correctional

Services Division sponsor or conduct research into the issue of whether its segregation and restraint practices are the subject of differential administration, or have a differential impact, on female, aboriginal and racial minority offenders.

With regard to the corporate culture within correctional institutions it is recommended that:

67. The Correctional Services Division develop a plan to transform the culture within institutions from the current culture the hallmarks of which are informality, pragmatism and insularity to one the hallmarks of which are accountability, integrity, openness and a respect for the rule of law. This plan is to be developed following receipt of the current Ontario study on organizational culture in correctional institutions expected to be complete in early 1997.

With regard to record keeping in institutions it is recommended that:

68. Instructions for completing incident reports be revised to ensure that staff who complete incident reports do so by way of factual description only and not conclusory statements as to the amount of force used without reference to factual background. Reports submitted that do not meet the standard are to be rejected by the Shift Supervisor or other senior administrator. Failure to submit a proper report shall be the subject of employee discipline management for both front line staff and the Shift Supervisor.

69. The adult and youth manuals of policy and procedures be amended to require that:

    (a) All institutions keep a log that details admission to, and discharge from, segregation. Whenever an offender is placed in segregation the Shift Supervisor shall personally make an entry in the segregation log that fully describes the reason for placement of the offender in segregation including specifying under which section of the applicable regulations the offender is being placed in segregation.

    (b) The offender specific segregation logs be maintained for the periodic checks of offenders and a description of their activity at the time of the check of the offender.

70. The overall segregation log and offender specific segregation logs be kept in the segregation unit in a safe and secure location.

71. A form be designed and implemented that requires Superintendents document the post-usage review on each usage of segregation that is currently required by policy. The form shall indicate the legal reason for, and duration of segregation and shall summarize the segregation log. A copy of this report shall be sent to the Regional Director. This will only apply to adult offenders given the recommended introduction of review teams in respect of young offenders.

72. With respect to the monitoring of rounds:

(a) An electronic round monitoring system be implemented throughout all correctional institutions.

(b) The information from the monitoring system shall be reviewed by the Shift Supervisor who shall note any exceptions to the complete conduct of rounds and shall investigate such exceptions and report them to the Superintendent immediately. Superintendents shall ensure that corrective action is taken for any unexplained non-conduct of prescribed rounds.

73. A team rotation model for the conduct of rounds be used by all correctional institutions in conjunction with the electronic round monitoring system.

With regard to videotaping in correctional institutions it is recommended that:

74. The security review of the institutions that are to remain following the upcoming closures include the issue of perimeter and internal security videotaping to ensure consistent practice.

75. The Department of the Solicitor General develop and implement a new written policy on incident videotaping that includes the following requirements:

(a) All operators of video cameras during incident videotaping be sufficiently trained so as to provide a credible audio/visual record of an incident.

(b) Incident videotaping commence prior to the actual interaction with the offender where possible and include taping of pre-incident planning and instructions issued by the Shift Supervisor or other leader of the intervention.

(c) All cameras used for the purpose of videotaping be equipped with a tamper-proof date-time feature and that this feature be activated during all video tapes.

(d) All incident video tapes be continuous from start to finish without interruption.

(e) Shift Supervisors and others in positions of command over video camera operators be specifically prohibited from issuing instructions to video camera operators to stop filming during an incident.

(f) Staff be instructed not to stand or position themselves in a manner that will unnecessarily obstruct the videotaping of an incident and video camera operators be instructed and empowered to require officers to move when they unnecessarily obstruct the videotaping of an incident.

(g) Video camera operators remain sufficiently close to offenders who are being moved

within an institution so that they are not out of the view of the camera at any point in time.

(h) Incident video tapes include a description by the Shift Supervisor of the event and the videotaping of related issues such as weapons found, injuries to staff or the offender and the weighing of Oleoresin Capsicum canisters.

(i) Shift Supervisors shall not operate the video camera.

(j) Incident videotapes be retained for the same period as the relevant written reports relating to the same incident.

76. With respect to the monitoring of special management offenders:

(a) A written provincial policy be developed on the issue of camera monitoring and video taping of special management offenders;

(b) A written provincial suicide prevention policy be developed and implemented within institutions with appropriate training support that includes the use of suicide screening tools, staff awareness and policy on the use of camera monitoring as a supplement to, rather than a substitute for, human contact;

(c) That electronic cell monitoring never be used solely as a matter of convenience;

(d) That appropriate measures be put in place to ensure that male staff do not observe on camera the private activities that female offenders may be engaged in in their cells.

With regard to the internal investigation of incidents occurring within a correctional institution it is recommended that:

77. The Department of the Solicitor General appoint a Director, Operational Review, reporting directly to an Assistant Deputy Minister. The Director shall employ at least one full time investigator/auditor.

78. The Director, Operational Review, shall be the official responsible for overseeing internal investigations and shall:

(a) Prepare new written policies that draw on the best features of Directive 91-3 and YOI A-7 and that:

(i) apply to adult and youth correctional facilities;

(ii) encompass criminal, child protection and internal investigations;

(iii) are not limited to only certain allegations of criminal conduct,

(iv) clearly delineate which official is responsible for particular components of the policy;

(v) ensures that decisions regarding the pursuit of internal investigations are not, in effect, delegated to the police;

(vi) provide for an escalating hierarchy for convening reviews based on the nature of an incident;

(b) For the purpose of paragraph (a)(vi), above, investigations shall be in three general categories as follows:

(i) Level 1 investigations related to minor internal matters will be convened by the Regional Director and will be carried out by:

A. A Superintendent or Deputy Superintendent from another institution, or,
B. The investigator from the Operational Review Branch (with the approval of the Director, Operational Review).

(ii) Level 2 investigations related to more serious allegations such as excessive use of force or significant violations of departmental policy shall be convened by the Regional Director in consultation with the Director of Corrections and shall be comprised of a two person team:

A. The investigator from the Operational Review Branch, and,
B. A Superintendent or Regional Director from another region.

(iii) Level 3 investigations related to serious matters including major disturbances such as riots, maximum security escapes, hostage takings, allegations of serious staff assaults, abuse of power, violations of law or serious rights violations shall be convened by the Director of Corrections or a more senior departmental official and shall be comprised of a three person team:

A. The Investigator from the Operational Review Branch,
B. A Senior Official from the Department of the Solicitor General (Regional Director or more senior) or from the Department of Justice, and,
C. An external qualified investigator.

(c) Develop a roster of trained, qualified fee for service external investigators who are available on short notice for the purpose of participating in Level 3 investigations;

(d) Prepare a guide for the conduct of investigations to be used in Level 1, 2 or 3 investigations;

(e) Design and implement training for investigators and senior administrators on internal investigations;

(f) Develop a system to ensure that, once final, internal investigations are:
   (i) promptly considered by the applicable departmental officials;
   (ii) decisions taken in respect of the investigation are documented; and
   (iii) decisions that are made are, in fact, implemented.

79. Despite the criteria described above, investigations that could reasonably be expected to address the issue of performance of Superintendents, Regional Directors or other senior departmental officials be convened as Level 3 investigations.

With regard to proactively ensuring compliance with laws and policies it is recommended that:

80. The new Director, Operational Review, shall be the official responsible for compliance reviews and shall:

(a) Prepare a new written policy on the conduct of compliance reviews of correctional institutions;

(b) Prepare a self-audit work book for use by Superintendents;

(c) Prepare a new departmental audit work book for use by the audit team that utilizes the best features of the existing "Operational Review Compliance Checklist" and adds sections to address the changes in law and policy arising from this report;

(d) Oversee an operational review program in which:

   (i) Superintendents are required to attest semi-annually that the facility has been reviewed using the work book; and,

   (ii) departmental compliance reviews of all correctional institutions are conducted every two years.

(e) Develop a system to ensure that, once final, compliance reviews are:

   (i) promptly considered by the applicable departmental officials;

(ii) decisions taken with respect of the compliance review are documented; and

(iii) decisions that are made are, in fact, implemented.

81. With respect to the accreditation of correctional facilities, the Correctional Services Division propose to the correctional authorities in Ontario a joint study on correctional accreditation in Canada and that the study consider whether to develop a Canadian accreditation program or whether to propose to the American Correctional Association that a new accreditation standard be developed by the ACA for Canadian correctional institutions so as to accommodate the differences in Canadian laws and correctional policy. The result of the study should be discussed at the next national meeting of Heads of Corrections.

With regard to the management information available within the Correctional Service Division it is recommended that:

82. A two prong approach be taken to improving management information capabilities:

(a) in the short term,

(i) the policy and procedures on management information collection be revised to include issues of offender treatment and rights, incorporate the regional offices and make Regional Directors accountable for attesting to periodic legal compliance within their region;

(ii) a detailed monthly reporting form be designed and implemented for all adult and youth institutions that includes issues of offender rights, use of force, administrative segregation and misconducts and crisis intervention team deployment;

(b) in the medium term,

(i) a priority item for the Integrated Justice Project be the creation of an integrated computerized offender management system that includes management information capabilities;

(ii) the Integrated Justice Project review and revise management information practices for the Correctional Services Division to ensure that, among other matters, significant incidents such as the use of force, institutional misconducts, non-misconduct related use of segregation and use of restraints all be the subject of comprehensive data collection efforts and that such information be part of the hierarchical reporting regime.

With regard to facilitating public involvement and input into the operation of correctional

institutions it is recommended that:

83. (a) The Solicitor General appoint a Citizens Advisory Committee for each region in the Correctional Services Division and that the Chair of each of these committees serve as a Provincial Committee providing advice to the Minister. The Corrections Act should be amended to give these committees statutory recognition and definition;

(b) The Correctional Services Division, in partnership with community participants, sponsor an annual conference, the focus of which is facilitating public involvement in corrections.

With regard to the internal grievance procedure available for offenders dissatisfied with an act or omission of the correctional authority it is recommended that:

84. With respect to the grievance procedure concerning adult offenders:

(a) Regulation 84-257 be amended to include a grievance procedure; this amendment could be modelled on Section 19 to 21 of Regulation 92-71 respecting young offenders;

(b) The forms for initiating grievances be placed in all living unit control offices; and,

(c) Through notices posted in living units, offenders be advised that they may obtain a grievance form.

85. With respect to the grievance procedure applicable to young offenders:

(a) Section B-17 of the Young Offender Institutional Manual be rewritten to make reference to the correct section of the law;

(b) The forms for initiating grievances be placed in all living unit control offices;

(c) Through notices placed in the living units offenders be advised that they may obtain a grievance form; and,

(d) Regulation 92-71 be amended to incorporate Regional Directors as hearing the first level of grievances and to incorporate notice to the Youth Advocate of grievances.

With regard to court based remedies for breaches of offenders rights or other misconduct by the correctional authority it is recommended that:

86. With respect to the development of court based remedies for breaches of offenders' rights

while in custody, the Department of the Solicitor General contact the federal Department of Justice and propose that the current federal study in this regard being conducted in response to the Report of the Commission of Inquiry into Certain Events at the Prison for Women in Kingston be broadened to include adult offenders in provincial custody and young offenders.

With regard to the need for an expert external monitor of the conduct of the operations of the correctional system in New Brunswick:

87. Legislation be introduced to establish an expert, independent Correctional Investigator as an Officer of the Legislature with the function to conduct investigations into the problems of offenders related to decisions, recommendations, acts or admissions of the Solicitor General or any of his or her staff or any persons under the control or management of, or performing services or on behalf of, the Solicitor General, that affect offenders either individually or as a group.

88. (a) The legislation provide for two alternative forms of office of the Correctional Investigator:

(i) in the event an applicable interprovincial agreement is concluded the Correctional Investigator be an interprovincial Maritime Correctional Investigator; or

(ii) in the absence of such an agreement, or until such an agreement is reached, the Correctional Investigator be a new stand-alone Officer of the Legislature;

(b) The Solicitor General contact her counterparts in the other Maritime Provinces to determine their interest in concluding an inter-provincial agreement to establish a Maritime Correctional Investigator and that the ensuing interprovincial negotiations be conducted on behalf of the Government of New Brunswick by the Department of the Solicitor General.

(c) The Ombudsman Act be amended to exclude from the jurisdiction of the Ombudsman those matters within the jurisdiction of the Correctional Investigator;

(d) The Office of the Correctional Investigator be appropriately resourced.

With regard to the need to ensure that the views and wishes of young offenders are considered it is recommend that:

89. A Youth Advocate be appointed as an Officer of the Legislature pursuant to a new Youth Advocacy Act.

90. The Youth Advocacy Act would provide that:

(a) jurisdiction of the office would be to advocate in respect of:

(i) young offenders; and

(ii) any other matter designated by regulation;

(b) a legislative committee would hold hearings into the operation of the Act between two and three years after it comes into force.

91. The Youth Advocate be appropriately resourced.

With regard to ensuring the planned and co-ordinated implementation of recommendations set out in this Report it is recommended that:

92. The Solicitor General appoint a senior departmental official to lead the implementation of this report.

93. The departmental lead develop an implementation plan generally in accordance with the following ten point sequence:

(i) Issue ministerial orders;

(ii) Introduce the Corrections Reform Bill encompassing all necessary statutory amendments in one omnibus bill;

(iii) Prepare and implement those changes to regulations not dependant on legislative change;

(iv) Introduce the overall departmental management practice changes;

(v) Contact other jurisdictions regarding the joint studies or offices recommended in this report;

(vi) Implement the recommendations relating to linkages with other departments within the Government of New Brunswick and with the Integrated Justice Project;

(vii) Prepare and implement the second phase of regulation changes to come into force with the proclamation of the Corrections Reform Bill;

(viii) Prepare and implement the policy manual changes and departmental forms to come into force with the proclamation of the Corrections Reform Bill;

(ix) Develop and implement the necessary training;

(x) Implement any other miscellaneous recommendations.

With regard to ensuring that the implementation of this Report is carried out in an open manner and that the operation of correctional institutions is subject to public scrutiny it is recommended that:

94. The Bill that enacts the statutory amendments recommended in this report provide for a legislative select committee hearing to be held in two to three years time to assess the implementation, impact and adequacy of the changes enacted in this Report.